

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

|  |   |                            |
|--|---|----------------------------|
| MICHAEL KENNEDY,                               | § |                            |
| TDCJ-CID NO.433834,                            | § |                            |
| Plaintiff,                                     | § |                            |
|  | § |                            |
| v.   | § | CIVIL ACTION NO. H-05-3883 |
|  | § |                            |
| CLERK, FIRST COURT OF APPEALS, <i>et al.</i> , | § |                            |
| Defendants.                                    | § |                            |

OPINION ON DISMISSAL

Plaintiff, a state inmate incarcerated in the Texas Department of Criminal Justice–Correctional Institutions Division, has filed a civil rights complaint (Docket Entry No.1). Plaintiff has not filed the \$250.00 filing fee; therefore, the Court presumes that plaintiff seeks to proceed *in forma pauperis*. A prisoner, however, cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). The only exception to revocation of an inmate’s privilege to proceed *in forma pauperis* is if he is in immediate danger of serious physical harm. *Banos v. O’Guin*, 144 F.3d 883, 884 (5th Cir. 1998). Plaintiff’s complaint does not indicate that he is any danger.

Plaintiff’s litigation history reveals that he falls within the provisions of section 1915(g). Plaintiff has filed at least three other lawsuits in federal courts while incarcerated in prison or a detention facility. All three have been dismissed as either frivolous, malicious, or for failure to state a claim upon which relief may be granted.<sup>1</sup>

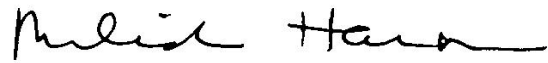
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<sup>1</sup> See *Kennedy v. Burkett*, Civ. Action No. 91cv244 (W.D.-Tex., August 27, 1992); *Kennedy v. Morales*, Civ. Action No. 6:92cv173 (W.D.-Tex., September 30, 1992); *Kennedy v. Little*, Civ. Action No.4:91cv1371 (S.D. Tex. March, 1, 1994).

Accordingly, it is ORDERED that this complaint is DISMISSED under 28 U.S.C. § 1915(g).  
Any pending motions are further DENIED.

The Clerk will provide a copy of this Order to all parties, to the TDCJ - Office of the General Counsel, P.O. Box 13084, Capitol Station, Austin, TX 78711, Fax 512-936-2159; and to the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas, 75702, Attention: Betty Parker.

SIGNED at Houston, Texas, on February 1, 2006.

A handwritten signature in black ink, appearing to read "Melinda Harmon".

MELINDA HARMON  
UNITED STATES DISTRICT JUDGE